

## Message Text

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ACTION ARA-10

INFO OCT-01 ISO-00 SSO-00 NSCE-00 USIE-00 INRE-00 CIAE-00

DODE-00 INR-07 NSAE-00 PA-01 PRS-01 SP-02 AID-05

EB-07 NSC-05 CIEP-01 TRSE-00 SS-15 STR-04 OMB-01

CEA-01 COME-00 FRB-03 XMB-02 OPIC-03 LAB-04 SIL-01

INT-05 L-03 H-02 /084 W

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O 312233Z JUL 75

FM AMEMBASSY LIMA

TO SECSTATE WASHDC IMMEDIATE 6120

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EO 11652: NA

TAGS: EIND, EMIN, PFOR, PE, US

SUBJ: MARCONA EXPROPRIATION - NATIONALIZATION FOR  
BREACH OF CONTRACT

REF: LIMA 6012

1. JAMES COMPTON OF MARCONA, WHO HAS BEEN IN CLOSE TOUCH WITH EMBASSY SINCE HIS ARRIVAL IN LIMA JULY 29, HAS INFORMED US OF LEGAL INTERPRETATION OF EXPROPRIATION DECREE BY MARCONA LAWYERS WHICH PLACES CASE IN CONSIDERABLY DIFFERENT PERSPECTIVE. COMPTON REFERRED TO THAT PORTION OF DECREE LAW WHICH READS AS FOLLOWS:

QUOTE...THAT THE FAILURE TO COMPLY WITH ITS CONTRACTUAL OBLIGATIONS CONSTITUTES MOTIVE FOR THE PERMANENT ANNULMENT OF MARCONA MINING COMPANY'S (RIGHTS), GIVEN THE APPLICATION OF PARAGRAPH 10.4 OF THE TENTH CLAUSE OF THE CONTRACT BETWEEN THE SANTA CORPORATION WITH MARCONA MINING COMPANY OF DECEMBER 9, 1966, AND CONSEQUENTLY THE ACQUISITION FREE OF ALL PAYMENT

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(ADQUISICION LIBRE DE TODO PAGO) OF THE INSTALLA-

TIONS AT SAN NICOLAS, IN CONFORMITY WITH SUB-  
PARAGRAPH B OF SAID PARAGRAPH;...END QUOTE

THIS PORTION IN TURN SERVES AS PREAMBLE TO ARTICLE 8 WHICH  
RESCINDS CONTRACTS AND PROVIDES THAT HIERRO PERU RECEIVES  
THE SAN NICOLAS FACILITIES "FREE OF PAYMENT".

2. COMPTON SAID MARCONA'S CONTRACTS WITH GOP DO IN FACT  
PROVIDE THAT COMPANY'S FACILITIES CAN BE TAKEN OVER BY  
STATE IN EVENT OF FAILURE TO COMPLY WITH CONTRACT PROVI-  
SIONS. THESE FACILITIES INCLUDE ALL OF SAN NICOLAS IN-  
STALLATIONS WHICH HAVE REPLACEMENT VALUE OF \$3000,000,000,  
ACCORDING TO COMPTON. ONLY EXCEPTION IS MOVING EQUIPMENT  
SUCH AS TRUCKS, ORE LOADERS, ETC. THESE HAVE A BOOK VALUE  
OF ABOUT \$5 MILLION AND A REPLACEMENT VALUE OF ABOUT  
\$15-\$20 MILLION, AND WERE THE ONLY PROPERTIES OF MARCONA  
THAT WERE ACTUALLY "EXPROPRIATED" WITHIN THE STRICT MEANING  
OF THE TERM, AND THEIR VALUE IS MORE THAN OFFSET BY THE  
AMOUNT OWED THE GOP BY MARCONA FOR REPAYMENT OF DEPLETION  
ALLOWANCE.

3. CONTRACTS ALSO PROVIDE THAT IN EVENT OF DIFFERENCE IN  
INTERPRETATION BETWEEN TWO CONTRACTING PARTIES, PROBLEM CAN  
BE SUBMITTED FOR ARBITRATION IN ACCORDANCE WITH RULES  
ESTABLISHED BY LIMA CHAMBER OF COMMERCE. IN EVENT EITHER  
PARTY REFUSES TO AGREE TO ARBITRATION, CASE MAY BE TAKEN  
TO PERUVIAN COURTS. CONTRACT ALSO PROVIDES THAT MARCONA  
RENOUNCES ANY CLAIM TO DIPLOMATIC INTERVENTION (CALVO PROVISION).

4. COMPTON CONCLUDES THAT GOP WILL EVENTUALLY TAKE THE  
POSITION THAT NOTHING IS OWNED THE COMPANY BECAUSE MAJORITY OF  
ITS ASSETS ARE COVERED BY THE CONTRACTS WHICH MARCONA HAS  
"VIOLATED", WHILE VALUE OF EXPROPRIATED ASSETS EXCEEDS MAR-  
CONA'S DEBTS TO PERU. SHOULD THE USG SEEK TO INTERVENE, GOP  
WILL POINT TO THAT PORTION OF CONTRACT IN WHICH MARCONA RE-  
NOUNCES ITS RIGHTS TO SUCH INTERVENTION. ALL THIS LEADS  
COMPTON TO SUSPECT THAT GOP HAS PREPARED ITS GROUND FAR BETTER  
THAN OUR INITIAL READING OF DECREE LAW HAD LED US TO BELIEVE.

5. NO ONE IN GOP HAS SO FAR ARGUED EXPROPRIATION ISSUE WITH  
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US ALONG FOREGOING LINES, BUT WE EXPECT THIS WILL EVENTUALLY  
BE THE CASE. IN FACT, THE AMBASSADOR IN HIS CONVERSATION WITH  
FOREIGN OFFICE SECRETARY GENERAL GARCIA BEDOYA TODAY POINTED  
OUT THAT NO ONE IN GOP HAD EVER PREVIOUSLY ALLEGED THAT MARCONA  
WAS IN BREACH OF CONTRACT; THAT IF GOP BELIEVED THIS TO BE THE  
CASE, IT SHOULD HAVE BROUGHT SUBJECT TO MARCONA'S ATTENTION  
AND AFFORDED MARCONA RIGHT TO RESPOND; AND THAT THE PROCEDURE  
EMPLOYED BY GOP IN THIS INSTANCES WILL INEVITABLY RAISE

QUESTIONS WITH RESPECT TO ALL CONTRACTS IN GENERAL NEGOTIATED  
WITH PERUVIAN GOVERNMENT. IN ADDITION, AMBASSADOR GAVE SECGEN  
COPY OF TALKING POINTS REFUTING, ON BASIS INFORMATION GIVEN  
US BY COMPTON, POINT BY POINT THE VARIOUS ALLEGATIONS CON-

TAINED IN THE EXPROPRIATION DECREE.

6. OTHER POINTS MADE BY AMBASSADOR IN HIS CONVERSATION THIS  
AFTERNOON WITH SECGEN WILL BE REPORTED SEPTTEL. WE SUGGEST  
THAT IT WOULD BE HELPFUL IN TERMS OF OUR EFFORTS HERE IF  
DEPARTMENT COULD CALL IN AMBASSADOR ARCE TO IMPRESS ON HIM  
THE SERIOUSNESS WITH WHICH USG VIEWS MATTER.  
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